



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 10 2008

Barbara G. McIntosh
General Counsel
League of Conservation Voters
1920 L Street, N.W.
Suite 800
Washington, D.C. 20036

RE: MUR 5970
League of Conservation Voters

Dear Ms. McIntosh:

On February 11, 2008, the Federal Election Commission notified your client, League of Conservation Voters ("LCV"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On October 22, 2008, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe LCV violated 2 U.S.C. § 441a(a)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Elena Paoli, the attorney assigned to this matter at (202) 694-1548.

Sincerely,

A handwritten signature in black ink that reads "Julie K. McConnell/eip".

Julie K. McConnell
Assistant General Counsel

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: League of Conservation Voters

MUR: 5970

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Lori Sherwood. See 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

Donna Edwards is the Executive Director of the ARCA Foundation ("ARCA"). She is also on the Board of Directors of the League of Conservation Voters ("LCV"), an environmental advocacy group. The complaint alleges that LCV made excessive contributions to Donna Edwards for Congress ("Committee") and excessive in-kind contributions through coordination with the Committee.

A. Excessive In-Kind Contributions

The complaint alleges that because ARCA gave money to LCV, LCV gave money to Edwards and promoted her campaign. The complaint alleges the LCV contributions constitute excessive in-kind contributions.

LCV states that it did not receive a grant from ARCA; the LCV Education Fund, a 501(c)(3) organization, did. LCV further notes that the LCV Education Fund began to receive grants from ARCA in 1999, before Edwards started working there.

The LCV Political Action Committee made a contribution to the Edwards Committee, and individuals associated with LCV made individual contributions, all within legal limits.

There is no information suggesting that contributions to Edwards from LCV's PAC and

1 individuals employed by LCV were given in exchange for a grant to LCV Education Fund.

2 Therefore, there is no reason to believe that LCV violated 2 U.S.C. § 441a(a)(1) by making
3 excessive in-kind contributions to Edwards.

4 **B. Coordination**

5 The complaint further alleges that there is an "appearance of coordination" between LCV
6 and the Committee.

7 LCV states that it conducted an independent expenditure campaign on behalf of Edwards.
8 LCV had a firewall in place, which included no communications with Edwards, her campaign
9 staff or volunteers, no unauthorized comments to the press, and no unauthorized volunteer efforts
10 for her campaign. LCV Board members and staff were given specific instructions and reminders
11 on firewall procedures. Edwards also was granted a leave of absence from the LCV Board as
12 soon as she announced her 2008 candidacy. In sum, Edwards was "ex-communicated." In
13 addition, LCV states that its independent expenditures were properly reported.

14 Under the Act and Commission regulations, the terms "contribution" and "expenditure"
15 include any gift of money or "anything of value" made by any person for the purpose of
16 influencing a Federal election. *See* 2 U.S.C. §§ 431(8)(A)(i) and (9)(A)(i); 11 C.F.R. §§
17 100.52(a) and 100.111(a). The phrase "anything of value" includes all in-kind contributions. *See*
18 11 C.F.R. §§ 100.52(d)(1) and 100.111(e)(1). In-kind contributions include expenditures made
19 by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a
20 candidate, a candidate's authorized committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i).

21 Commission regulations specify a three-prong test to determine whether a payment for a
22 communication becomes an in-kind contribution as a result of coordination between the person

1 making the payment and a candidate. See 11 C.F.R. § 109.21(a)(1)-(3). Under the first prong of
2 the coordinated communication test, the communication must be paid for by a person other than
3 a candidate, a candidate's authorized committee, a political party committee, or agents of any of
4 the foregoing. See 11 C.F.R. § 109.21(a)(1). Under the second prong, the communication must
5 satisfy one of the four content standards set forth in 11 C.F.R. § 109.21(c).¹ Under the third
6 prong, the communication must satisfy one of the five conduct standards set forth in 11 C.F.R.
7 § 109.21(d).²

8 The complaint's allegations are vague, and LCV has responded that it "ex-
9 communicated" Edwards by granting her a leave of absence from its Board of Directors and
10 through implementation of its firewall policy. Based on the absence of facts alleging conduct
11 that would constitute coordination and LCV's specific response, there is no information that the
12 conduct standard of the coordination regulations has been met. See 11 C.F.R. § 109.21(d).

¹ After the decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (Court of Appeals affirmed the District Court's invalidation of the fourth, or "public communication," content standard of the coordinated communications regulation), the Commission made revisions to 11 C.F.R. § 109.21 that became effective July 10, 2006. In a subsequent challenge by Shays, the U.S. District Court for the District of Columbia held that the Commission's content and conduct standards of the coordinated communications regulation at 11 C.F.R. § 109.21(c) and (d) violated the Administrative Procedure Act; however, the court did not vacate the regulations or enjoin the Commission from enforcing them. See *Shays v. FEC*, 508 F.Supp.2d 10, 70-71 (D.D.C. Sept. 12, 2007) (NO. CIV.A. 06-1247 (CKK)) (granting in part and denying part the respective parties' motions for summary judgment). Recently, the D.C. Circuit affirmed the district court with respect to, *inter alia*, the content standard for public communications made before the time frames specified in the standard, and the rule for when former campaign employees and common vendors may share material information with other persons who finance public communications. See *Shays v. FEC*, ___ F.3d ___, (D.C. Cir. 2008).

² The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

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MUR 5970
Factual and Legal Analysis**

- 1 Therefore, there is no reason to believe that LCV violated 2 U.S.C. § 441a(a)(1) by making an**
- 2 excessive in-kind contribution in the form of a coordinated communication.**